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**UNITED STATES DISTRICT COURT  
IN THE WESTERN DISTRICT OF MICHIGAN**

PAMELA MONTGOMERY, on behalf of  
Herself and for the Benefit of All with the  
Common or General Interest, Any Persons  
Injured, and All Others Similarly Situated,

Plaintiffs,

vs.

KRAFT FOODS GLOBAL, INC., a  
Delaware Corporation; and STARBUCKS  
CORPORATION, a Washington Corporation,

Defendants

**CLASS ACTION COMPLAINT**  
**STATE & NATIONWIDE**  
**REPRESENTATIVE ACTION**  
**FOR (1) VIOLATION OF MCPA AND**  
**SIMILARLY WORDED STATE LAWS;**  
**(2) INNOCENT MISREPRESENTATION;**  
**(3) BREACH OF WARRANTY;**  
**(4) BREACH OF CONTRACT**  
**(5) VIOLATIONS OF THE LANHAM**  
**ACT, and JURY DEMAND**

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**CLASS ACTION COMPLAINT & JURY DEMAND**

Plaintiff PAMELA MONTGOMERY (“MONTGOMERY” or “Plaintiff,”) brings this  
action against KRAFT FOODS GLOBAL, INC. (“KRAFT”) and STARBUCKS  
CORPORATION (“STARBUCKS”) (collectively, “defendants”), on behalf of herself, all others  
similarly situated and the general public, and alleges upon information and belief, except as to  
her own actions, and the investigation of counsel, which included, inter alia, investigation,  
review and analysis of Defendants’ press releases, Defendants’ websites, web forums, and  
various news articles, as follows:

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**I. OVERVIEW & NATURE OF THE ACTION**

1. This action is brought on behalf of plaintiff individually, as representative of the  
common or general interest and as class representatives for all others similarly situated  
nationwide against KRAFT and STARBUCKS to redress defendants’ breach of contract; breach  
of warranty; innocent misrepresentation; unjust enrichment; various violations by defendants of  
state consumer protection statutes, including, without limitation, the Michigan Consumer

Protection Act (“MCPA”), MCL 445.903(1)(a) through (cc) and MCL 445.903(b); similarly worded consumer protection laws in effect throughout the numerous states in which defendants marketed and sold the subject products;<sup>1</sup> and 15 U.S.C. §§45(a)(1) and 52(a)(2) (the “FTC Act”) which proscribes “unfair and deceptive trade practices,” including “false advertisement for the purpose of inducing... the purchase of food, drugs, devices, services or cosmetics;”<sup>2</sup>

2. This action arises from defendants’ independent and joint marketing; packaging; sale; and distribution of their KRAFT-“Tassimo” single-serving coffee brewing system and STARBUCKS-“t-cups” coffee portions;

3. For a period of time that, on information and belief, included a number of months spanning from or about January 2010, or earlier, through present, defendants continued marketing, packaging, selling and distributing said brewing system as the single serve brewing

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<sup>1</sup> Other state consumer protection laws similar in scope to Mich. Comp. Laws Ann. §445.901 et seq. defendants violated include, without limitation: (2004); Ala. Code §8-19-1 et seq. (2004); Alaska Stat. §45.50.471 et seq. (2004); Ariz. Rev. Stat. Ann. §44-1521 et seq. (2004); Ark. Code Ann. §4-88-101 et seq.; Cal. Civ. Code 1770 et seq. (2004); Cal. Bus. & Prof. Code §§17200, 17500, et seq. (2004); Colo. Rev. Stat. §6-1-105 et seq. (2004); Conn. Gen. Stat. Ann. §42-110a et seq. (2004); Del. Code Ann. tit. 6 §2511 et seq. (2004); D.C. Code Ann. §28-3901 et seq. (2004); Fla. Stat. Ann. 501.201 et seq. (2004); Ga. Code Ann. §10-1-372 (2004); Ga. Code Ann. §10-1-393 (2004); Ga. Code Ann. §§10-1-420 (2004); Haw. Rev. Stat. §480-1 et seq. (West 2003); Idaho Code §48-601 et seq. (2004); 815 Ill. Comp. Stat. 505/1, et seq. (2004); Ind. Code Ann. §24-5-0.5-3 (2004); Iowa Code §714.16 (2004); Kan. Stat. Ann. §50-623 et seq. (2004); Ky. Rev. Stat. Ann. §367.170 (2004); La. Rev. Stat. Ann. §51:1405 (West 2004); Me. Rev. Stat. Ann. tit. 5, §205-A et seq. (2004); Md. Code Ann., Com. Law §13-301; et seq. (West 2004); Mass. Gen. Laws ch. 93A, §1 et seq. (2004); Minn. Stat. Ann. §325D.43 et seq. (2004); Minn. Stat. Ann. §325F.68 et seq. (2004); Minn. Stat. Ann. §325F.67 et seq. (2004); Miss. Code Ann. §75-24-1 et seq. (2004); Miss. Code Ann. §97-23-3 (2004); Mo. Ann. Stat. §407.010 et seq. (2004); Mont. Code Ann. §30-14-101 et seq. (2004); Neb. Rev. Stat. §59-1601 et seq. (2004); Nev. Rev. Stat. Ann. §598.0903 et seq. (2003); N.H. Rev. Stat. Ann. §358-A:1 et seq. (2004); N.J. Stat. Ann. §56:8-1 et seq. (2004); N.M. Stat. Ann. §57-12-1 et seq. (2004); N.Y. Gen. Bus. Law §§349 to 350-e (2004); N.C. Gen. Stat. §75-1 et seq. (2004); N.D. Cent. Code §51-15-01 et seq. (2003); N.D. Cent. Code §51-12-01 et seq. (2003); Ohio Rev. Code Ann. §1324.01 et seq. (2003); Okla. Stat. Ann. tit. 15 §751 et seq. (West 2004); Or. Rev. Stat. §646.605 et seq. (2003); 73 Pa. Cons. Stat. §§201-1 et seq. (2004); 3 P.R. Laws Ann. §§341 et seq. (2001); R.I. Gen. Laws §6-13.1-1 et seq. (2003); S.C. Code Ann. §39-5-10 et seq. (2003); S.D. Codified Laws §37-24-1 et seq. (2004); Tenn. Code Ann. §47-18-101 et seq. (2004); Tex. Bus. & Com. Code Ann. §17.41 et seq. (2004); Utah Code Ann. §13-11-1 et seq. (2004); Vt. Stat. Ann. tit. 9 §2453 et seq. (2004); Va. Code Ann. §59.1-196 et seq. (2004); Wash. Rev. Code Ann. §§19.86.010 et seq. (2004); W. Va. Code 46A-6-101 et seq. (2003); Wis. Stat. Ann. §100.18 (2003); and Wyo. Stat. Ann. §40-12-101 et seq. (2003).

<sup>2</sup> *Note:* While defendants’ violations of the FTC Act are probative of the unlawful nature of defendants’ false and misleading conduct, plaintiff concedes that the FTC Act may not, in itself, give rise to a private right of action.

44 system for which STARBUCKS coffee portions were available or exclusively available.<sup>3</sup>  
45 Specifically, such marketing and packaging included, without limitation: express representations  
46 regarding defendants' association, affiliation, and joint offerings on the outermost packaging of  
47 the brewing system; and express representations of the same by way of information and materials  
48 contained inside the system's outer container. Among the representations and information was  
49 defendant STARBUCKS'S widely familiar symbol, logo, and trademark, which defendants  
50 printed and displayed prominently on said packaging and materials, and statements that  
51 defendants' system afforded use of STARBUCKS single portion brewing cups;

52 4. That by their actions as described above defendant defendants used, provided,  
53 communicated, or disseminated false and misleading information to plaintiff and similarly  
54 situated consumers for reason that while engaging in said activities defendants knew the said  
55 joint offerings by and affiliation or association between the KRAFT brewing system and  
56 STARBUCKS portion brewing cups was highly uncertain; had been terminated, was in the  
57 process of being terminated, or was likely in the immediate and foreseeable future to become  
58 terminated, and that such had resulted in or would result in the perpetual unavailability of  
59 STARBUCKS portion cups compatible for use with the KRAFT brewing system;<sup>4</sup>

60 5. Throughout said period, Defendants understood that in the context of a then-  
61 emerging single-serve system consumer coffee market, of considerable importance and

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<sup>3</sup> In competition with, and as compared to, defendant KRAFT's sole or dominant competitor in the single serve coffee brewing market, the class of systems and associated single serving cups offered by Keurig/Green Mountain Coffee.

<sup>4</sup> See Kraft Foods Global, Inc. v Starbucks Corporation, Case No. 11-389-cv (2<sup>nd</sup> Cir.), wherein defendant KRAFT appealed from the SDNY District Court's order entered on January 31, 2011 denying KRAFT's application for a preliminary injunction. By letter dated November 5, 2010, Defendant-Appellee STARBUCKS notified KRAFT that, effective March 1, 2011, it would terminate the parties' distribution agreement and other related agreements regarding the Tassimo system on the basis that KRAFT had materially breached its obligations under the agreements and failed to cure those breaches. KRAFT sought a preliminary injunction to prevent STARBUCKS from terminating the agreements which the district court denied; See also, Email Correspondence between defendants, attached as "Exhibit A."

62 materiality to plaintiff's and similarly situated consumers' decisions to purchase a KRAFT "t-  
63 cup" style system, as compared to a competing Keurig "k-cup" style system was what brands of  
64 Tassimo-compatible portion-cups would be available to consumers for use with the Tassimo  
65 system; and specifically, whether Tassimo-compatible STARBUCKS portion cups would remain  
66 available;

67 6. That despite KRAFT's actual or constructive knowledge that its underlying  
68 agreements with STARBUCKS regarding the continued availability of said STARBUCKS t-cups  
69 to consumers, KRAFT, and on information and belief, STARBUCKS also, continued to engage  
70 in the marketing, packaging, sale and distribution of said brewing system with false information  
71 so as to mislead consumers into believing the Tassimo system afforded consumers' the present  
72 and continued availability of compatible STARBUCKS portion cups;

73 7. Among the false and misleading information, advertising, labeling, and other  
74 representations defendants made, throughout the subject period of time, they continued to display  
75 and sell to consumers Tassimo systems packaged in cartons bearing defendant STARBUCKS'  
76 familiar logo and representing that defendant STARBUCKS' portion cups were available and  
77 would remain available for use or exclusive use with the Tassimo system;

78 8. Defendants continued to engage in said conduct for a protracted period of, on  
79 information and belief, approximately two (2) years, despite knowing their agreements allowing  
80 continued distribution of the STARBUCKS T-cups had terminated or would imminently  
81 terminate;

82 9. That during said period of time, defendants could have, but to maximize their  
83 economic and pecuniary interests, did not undertake any actions or efforts to correct the Tassimo  
84 system's false and misleading labeling and information; and did not undertake any actions or

85 efforts to provide or facilitate notice among retailers or consumers that the Tassimo's packaging,  
86 labeling, and marketing was false and misleading in light of the actual status of defendants'  
87 dealings and agreements;

88 10. During said period of time, despite receiving numerous inquiries and other calls  
89 for response from consumers and the public requesting clarification of the continued availability  
90 of STARBUCKS T-cups, defendants further engaged in the affirmative publication of false and  
91 misleading information regarding the then current and prospective KRAFT/STARBUCKS  
92 offerings, and actively concealed information known to them at the time in an effort to mislead  
93 consumers and the marketplace;

94 11. That while defendants were engaging in said conduct which they naturally  
95 understood would result in the discontinuation of Tassimo-compatible STARBUCKS portion  
96 cups, defendant STARBUCKS was contemporaneously engaging in contentious negotiations  
97 with defendant KRAFT as well as negotiations intended to result in offerings by STARBUCKS  
98 of portioned brewing cups for use with Keurig systems, the Tassimo's system direct competitor  
99 in the marketplace, all at the expense of consumers who were still purchasing the Tassimo  
100 system under the belief that STARBUCKS brewing cups would be- and for a reasonable time  
101 remain available;

102 12. That on information and belief, the discontinuation of STARBUCKS T-cups was  
103 caused, at least in part, by contractual breaches and failures by defendant KRAFT,<sup>5</sup> which  
104 KRAFT undertook to maximize its pecuniary and economic interests to the detriment of plaintiff  
105 and those numerous other consumers defendants induced to purchase the Tassimo system by  
106 falsely representing the present and continued availability of Tassimo-compatible STARBUCKS  
107 portion cups;

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<sup>5</sup> See Email Correspondence between defendants, attached as "Exhibit A."

108           13.     That defendant STARBUCKS'S conduct further constituted unfair, deceptive and  
109 unlawful competitive and business practices for reason that it consented to, endorsed, and  
110 benefited from the joint advertising, labeling, marketing, sales, and distribution in which  
111 STARBUCKS engaged with defendant KRAFT, knowing at all relevant times that KRAFT's  
112 and Green Mountain Coffee Roasters, Inc.'s proprietary T-cup and K-cup brewing systems  
113 existed as a competitive dichotomy in the marketplace. Defendant STARBUCKS also knew, at  
114 all relevant times that: defendants' false and misleading packaging and advertising and  
115 concealment of the STARBUCKS/KRAFT dispute and ultimate separation and disassociation;  
116 the timing and circumstances surrounding its discontinuation of STARBUCKS' T-cups; and its  
117 actions in furtherance of the production of STARBUCKS K-cups would confuse and damage  
118 consumers in their selection of and purchase of a T-cup or K-cup system;

119           14.     That after defendants knew or had reason to know their agreements concerning  
120 the continued distribution of the STARBUCKS T-cups were in dispute; had terminated; or would  
121 terminate in the future, defendants concealed the information by failing to correct the packaging  
122 of the Tassimo brewing system; by failing to disclose the same to consumers; and by engaging in  
123 systemic concealment as regarded its retailers, online sellers, and the consuming public  
124 generally, thereby causing and perpetuating the false belief by retailers and the public that  
125 defendants' agreements, joint venture, and joint product offerings related to the Tassimo system  
126 and STARBUCKS T-cups still existed and would remain in existence prospectively;

127           15.     Defendants' conduct as set forth herein above, and more fully below, has caused  
128 plaintiff and a great number of similarly situated consumers actual, statutory, and otherwise  
129 available damages at law or in equity;

130           16. As a result of wrongful acts and omissions of the defendant in this case, plaintiff  
131 and numerous consumers have been exposed to and damaged by what constitutes one of the  
132 more historically blatant specimens of consumer confusion and fraud, caused by the deliberate  
133 and self-interested actions of defendants;

## 134                                   **II. THE PARTIES**

135           17. Plaintiff Pamela Montgomery is a citizen and resident of Michigan, residing in  
136 Okemos, Michigan.

137           18. Defendant KRAFT, being Kraft Foods Global, Inc., is a Delaware corporation  
138 with its principal place of business located in Northfield, Illinois. At all relevant times, KRAFT  
139 engaged in, *inter alia*, the promotion, distribution and sale of aforementioned Tassimo consumer  
140 goods brewing system; and in connection with its agreements with defendant STARBUCKS,  
141 consumer packaged “Starbucks” coffee products, including Starbucks T-cup portioned brewing  
142 cups;

143           19. Defendant STARBUCKS, being Starbucks Corporation, is a Washington  
144 corporation with its principal place of business located in Seattle, Washington. At all relevant  
145 times, STARBUCKS engaged in, *inter alia*, the promotion, distribution and sale of its consumer  
146 packaged “Starbucks” coffee products, including Starbucks T-cup portioned brewing cups, and  
147 engaged in the negotiation of-, performance of-, and varied activities related to certain  
148 agreements related to said products with defendant KRAFT;

**III. REPRESENTATIVE PLAINTIFF**

20. Dr. Montgomery purchased her KRAFT Tassimo brewing system after comparing the Tassimo and Keurig systems, based on the false and misleading representations by defendants regarding the KRAFT/STARBUCKS association described herein;

21. After the system was purchased, with time it became increasingly difficult and impossible to find and purchase the Starbucks T-cup portioned brewing cups;

22. Seeking further information regarding the continued availability of the subject product Plaintiff inquired from several sources, including the internet;

23. That local retailers, including, without limitation, Fred Meijer, where Plaintiff's system was purchased, and Walmart Stores, did not and would not refund Tassimo purchases or provide any remedy, and represented throughout the class period they were unable to assure when Starbucks T Cups would again become available or be replenished;

**IV. OTHER PROPOSED MEMBERS' EXPERIENCES**

24. On information and belief, thousands, tens of thousands, or hundreds of thousands of consumers have suffered the same consumer experience as plaintiff, and thusly were similarly damaged. Specifically, these consumers, much like plaintiff, selected a upon purchasing defendants' Tassimo brewing system in reliance upon defendants' false and misleading information printed-on and included with the system, that selection of the Tassimo system, as compared to its alternative in the marketplace, the Keurig system, assured customers' availability and use of Starbucks compatible brewing cups;

**V. CLASS ACTION ALLEGATIONS**

25. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of herself and on behalf of a class;



176 26. Plaintiff seeks certification of the following:

177 NATIONAL CLASS

178 All persons in the United States who purchased or acquired a  
179 Tassimo/Starbucks coffee brewing system whose packaging or  
180 other information represented that the system was compatible for  
181 use with Starbucks brewing cups.

182  
183 Plaintiff expressly reserves her right to amend this definition if  
184 discovery and further investigation reveal that the National Class  
185 should be expanded or otherwise modified.

186  
187 MICHIGAN CLASS

188  
189 All persons in Michigan who purchased or acquired a  
190 Tassimo/Starbucks coffee brewing system whose packaging or  
191 other information represented that the system was compatible for  
192 use with Starbucks brewing cups.

193  
194 Plaintiff expressly reserves her right to amend this definition if  
195 discovery and further investigation reveal that the Michigan Class  
196 should be expanded or otherwise modified.

197  
198 NUMEROSITY

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200 27. The National and Michigan Classes (collectively the "Class") are so numerous  
201 that the individual joinder of all members, in this or any action, is impracticable. The exact  
202 number or identification The National Class and the District of Columbia Class (collectively the  
203 "Class"). The exact number or identification of Class members is presently unknown to Plaintiff,  
204 but it is believed that the National Class numbers in the hundreds of thousands, while the  
205 Michigan number is at least in the thousands. The identity of Class members is ascertainable.  
206 Class members may be informed of the pendency of this class action by a combination of direct  
207 mail and public notice, or other means, including through the records possessed by defendants  
208 and their retail affiliates;  
209

COMMONALITY

28. Common questions of fact and law exist as to all members of the Class, which predominate over questions affecting only individual members of the Class. These include, but are not limited to, the following:

- (a) whether defendants and their retail affiliates packaged, promoted, distributed or sold products with false and/or misleading information;
- (b) whether as more fully particularized in the following causes of action defendants' conduct in marketing, promoting, distributing and selling said Tassimo/Starbucks system violated federal and/or Michigan laws;
- (c) whether defendant and their retail affiliates engaged in unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce or otherwise unlawful business and trade practices under applicable state and federal law;
- (d) whether and to what extent representative plaintiff and the Class members are entitled to compensatory damages, including actual damages;
- (e) additionally and alternatively, whether and to what extent representative plaintiff and the Class members are entitled to compensatory damages, including statutory damages;

(f) additionally and alternatively, whether and to what extent representative plaintiff and Class members are entitled to declaratory, injunctive and/or equitable relief;

TYPICALITY

29. Plaintiff's claims are typical of the claims of the Class and all such claims arise out of the same wrongful course of conduct engaged in by defendants;

ADEQUACY

30. Plaintiff is an adequate representative of the Class because she is a member of the Class and her interests do not conflict with the interests of the members of the Class she seeks to represent. Plaintiff is represented by experienced and able counsel, and plaintiff's counsel intends to prosecute this action vigorously for the benefit of all Class members. Plaintiff and her counsel can fairly and adequately protect the interests of the members of the Class;

PREDOMINANCE AND SUPERIORITY

31. The class action is the best available method for the efficient adjudication of this litigation because individual litigation of the Class members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single-adjudication, economies of scale, and comprehensive supervision by a single court;

254 **VI. CAUSES OF ACTION**

255 **COUNT I**

256 **Violation of the Michigan Consumer Protection Act**  
 257 **MCL 45.903 et seq.**

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 259  
 260 32. Plaintiff repeats and realleges each of the foregoing and following allegations as if  
 261 fully set forth herein;

262 33. The Michigan Consumer Protection Act (hereinafter “MCPA” or the “Act”), at  
 263 MCL § 45.903 et seq., prohibits unfair, unconscionable, or deceptive methods, acts, or practices  
 264 in conduct of trade or commerce;

265 34. As for fully set forth herein above and below, defendants who at all relevant times  
 266 were engaged in trade or commerce, violated the following pertinent provisions of the MCPA,  
 267 which sections define the types of conduct constituting violations thereunder during the subject  
 268 time period, being January 2010 through August 2011 or approximately that period:

- 269 (a) Causing a probability of confusion or misunderstanding as to the  
 270 source, sponsorship, approval, or certification of goods or services;  
 271  
 272 (c) Representing that goods or services have sponsorship, approval,  
 273 characteristics, ingredients, uses, benefits, or quantities that they do  
 274 not have or that a person has sponsorship, approval, status,  
 275 affiliation, or connection that he or she does not have;  
 276  
 277 (h) Advertising goods or services with intent not to supply reasonably  
 278 expectable public demand, unless the advertisement discloses a  
 279 limitation of quantity in immediate conjunction with the advertised  
 280 goods or services.  
 281  
 282 (n) Causing a probability of confusion or of misunderstanding as to the  
 283 legal rights, obligations, or remedies of a party to a transaction.  
 284  
 285 (p) Disclaiming or limiting the implied warranty of merchantability and  
 286 fitness for use, unless a disclaimer is clearly and conspicuously  
 287 disclosed.  
 288

- (q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.
- (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.
- (t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.
- (u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.
- (w) Representing that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.
- (bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.
- (cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

35. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(a), (c), and (bb) for reason that the aforementioned false and misleading product information caused and resulted in a high probability of confusion or misunderstanding among consumers as to the overall state of affairs surrounding the Tassimo/Starbucks system; and the Tassimo system's and Starbucks T-cups' source, sponsorship, approval, certification or characteristics, namely that such sponsorship, approval, or certification by defendant

STARBUCKS regarding Starbucks T-cups with respect to defendant KRAFT, or by defendant KRAFT regarding the Tassimo system with respect to defendant STARBUCKS existed and would continue to exist, despite defendants' actual and constructive knowledge to the contrary, which knowledge defendants possessed, on information and belief, from or before October, 2010;

36. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(h) for reason that from, on information and belief, or about October 2010 through or about August 2011 defendants' independently and jointly advertised and sold the Tassimo system and corresponding Starbucks T-cups including false and misleading information regarding the same despite their actual or constructive knowledge and intent that reasonably expectable public demand for the Starbucks T-cups would not be met;

37. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(n) and (t) for reason that defendants caused confusion and misunderstanding among consumers as to their legal obligations, rights, remedies, and benefits in relation to their purchase or other receipt of a Tassimo brewing system;

38. Defendants, in violation of MCL § 45.903(3)(1)(p) and (t) on information and belief, will claim that certain information or notice operated in some way to affect the warranty of merchantability and fitness for use, or other obligation, right, remedy, or benefit to which plaintiff and consumers are entitled, despite not clearly and conspicuously disclosing the same as required;

39. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(q) for reason that from, on information and belief, or about October 2010 through or about August 2011 defendants' independently and jointly advertised and sold the Tassimo

353 system and corresponding Starbucks T-cups including the false and misleading information  
354 mentioned herein despite their actual or constructive knowledge that the subject of the  
355 transactions, that being plaintiff's and consumers' brewing and consumption of coffee using  
356 compatible Starbucks T-cups, would not be provided promptly, or at a specified time, or within a  
357 reasonable time;

358 40. Defendants' conduct as described herein above and below violated MCL §  
359 45.903(3)(1)(s) for reason that defendants independently and jointly advertised, distributed and  
360 sold the Tassimo system and corresponding Starbucks T-cups including the false and misleading  
361 information mentioned herein while failing to reveal to Plaintiff, Class members, and the public  
362 the true status of their relationship, association, agreements and disputes as those related to the  
363 continued availability and supply of Starbucks T cups as represented, which information  
364 constitutes material facts, the omission of which by defendants tended to and did actually  
365 mislead and deceive plaintiff, the Class, and the Public, and which facts could not reasonably  
366 have been known or ascertained by plaintiff, the Class, or the Public;

367 41. Defendants' conduct as described herein above and below violated MCL §  
368 45.903(3)(1)(u) for reason that upon plaintiff's, Class members' and others' attempts to rescind,  
369 cancel, or otherwise terminate purchases of the Tassimo system in accordance with defendants'  
370 advertisements, representations, and other provisions of law, defendants and defendants' agents  
371 did not promptly restore the payments such persons gave for the Tassimo systems;

372 42. Defendants' conduct as described herein above and below violated MCL §  
373 45.903(3)(1)(w) for reason that defendants represented to plaintiff, the Class, and to the public,  
374 as an inducement for purchasing the Tassimo/Starbucks system, that they would receive the  
375 benefit of having available and using compatible Starbucks brewing cups, when in actuality that

benefit was not reasonably certain and secure for the subject time period, and in fact the provision of which was, contrary to law, contingent on events and conditions defendants knew had not occurred, consummated, or become assured prior to the systems being purchased;

43. Defendants' conduct as described herein above and below violated MCL § 45.903(3)(1)(cc) for reason that Defendants failing to reveal to plaintiff, the Class, and the public facts material to their purchases of the Tassimo/Starbucks system in light of defendants' affirmative and positive representations regarding the state of affairs surrounding the Tassimo/Starbucks system and the continued availability of compatible Starbucks brewing cups, which representations included, but were not limited to, the images and information printed on the Tassimo system's outside carton;

44. Defendants violated the MCPA provisions identified above on each occasion a Tassimo/Starbucks system was sold to plaintiff and/or any member of the Class during the subject time period, as a result of which plaintiff and the Class have suffered actual harm;

WHEREFORE, Plaintiff, a person who has suffered damage as a result of defendants' violations of the MCPA, together with Class members, seeks actual and/or compensatory damages; restitution; and equitable relief, including, without limitation, refunds of the payments tendered for the Tassimo systems purchased during the subject period; the costs and expenses of litigation, including attorneys' fees; and any additional and further relief deemed available and appropriate under the circumstances.

## **COUNT II**

### **Innocent Misrepresentation**

45. Plaintiff repeats and realleges each of the foregoing and following allegations as if fully set forth herein;



401 46. Defendants' representations, as set forth in the preceding paragraphs, were made  
402 in connection with the making of a contract between plaintiff and Class members, and  
403 defendants;

404 47. Plaintiff and the Class would not have entered into the contracts to purchase the  
405 Tassimo/Starbucks system had the representations not been made;

406 48. Plaintiff and the Class suffered damage and economic losses as a result of  
407 entering into the contract, which losses benefited defendants and continue to benefit defendants;

408 WHEREFORE, Plaintiff together with Class members, seeks actual and/or compensatory  
409 damages; restitution; requests their purchases of said Tassimo systems be voided; and further  
410 seek equitable relief, including, without limitation, refunds of the payments tendered for the  
411 Tassimo systems purchased during the subject period; the costs and expenses of litigation,  
412 including attorneys' fees; and any additional and further relief deemed available and appropriate  
413 under the circumstances.

414 **COUNT III**

415 **Breach of Express and Implied Warranties**

416  
417 49. Plaintiff repeats and realleges each of the foregoing and following allegations as if  
418 fully set forth herein;

419 50. Defendants are merchants with respect to the subject consumer products pursuant  
420 to MCL 440.2104;

421 51. The Tassimo/Starbucks systems plaintiff and the Class purchased were subject to  
422 implied warranties of merchantability under MCL 440.2314;

423 52. Defendants, to induce the sales made certain express warranties and  
424 representations to Plaintiff, both orally and in writing (including, but not limited to, the

425 Tassimo/Starbucks statements contained on the outer container in which the systems were  
426 packaged, and which defendants and their affiliates placed on display) and through their  
427 advertising and conduct;

428         53. These express and implied warranties and representations, and the corresponding  
429 impressions they created, included, but were not limited to representations that the Tassimo  
430 systems afforded consumers' the present and continued availability of compatible STARBUCKS  
431 portion cups for use with the systems, and that the systems was designed for use with Starbucks  
432 brewing cups, and that Starbucks brewing cups were designed for use with the Tassimo brewing  
433 systems;

434         54. That contrary to said warranties and representations, contemporaneous to and  
435 following plaintiff's and Class members' purchases, defendants terminated and discontinued  
436 supply of Starbucks T cup brewing cups;

437         55. As a result, plaintiff and Class members cannot reasonably rely on the systems  
438 they purchased for the intended purpose of brewing Starbucks coffee;

439         56. Defendants have been unable and/or have refused to correct this problem or to  
440 void the purchases within a reasonable time;

441         57. As a direct and proximate result of defendants' various breaches of warranty,  
442 plaintiff and the Class have suffered damages, including the cost of purchasing the  
443 Tassimo/Starbucks system; diminished resale value of the system; interruption in use of the  
444 system to brew Starbucks coffee; and the cost of cover including having to purchase Tassimo's  
445 competing system, the Keurig type system, together with costs and attorney fees incurred in  
446 attempting to obtain relief from defendants' wrongful conduct;

WHEREFORE, Plaintiff together with Class members, seeks actual and/or compensatory damages; restitution; requests their purchases of said Tassimo systems be voided; and further seek equitable relief, including, without limitation, refunds of the payments tendered for the Tassimo systems purchased during the subject period; the costs and expenses of litigation, including attorneys' fees; and any additional and further relief deemed available and appropriate under the circumstances.

#### **COUNT IV**

##### **Breach of Contract**

58. Plaintiff repeats and realleges each of the foregoing and following allegations as if fully set forth herein;

59. That plaintiff's and Class members' transactions to purchase Tassimo/Starbucks systems constitute valid, enforceable contracts;

60. Defendants have breached the contracts by failing to provide or ensure reasonable availability and supply of compatible Starbucks brewing cups as represented and promised;

61. As a result of defendants' breach, plaintiff and Class members have suffered damages;

WHEREFORE, Plaintiff together with Class members, seeks actual and/or compensatory damages; restitution; requests their purchases of said Tassimo systems be voided; and further seek equitable relief, including, without limitation, refunds of the payments tendered for the Tassimo systems purchased during the subject period; the costs and expenses of litigation, including attorneys' fees; and any additional and further relief deemed available and appropriate under the circumstances.

**COUNT V**

**Unfair Competition Practices - Violation of the Lanham Act  
15 U.S.C. § 1125 et seq.**

62. Plaintiff repeats and realleges each of the foregoing and following allegations as if fully set forth herein;

63. The foregoing acts and conduct by defendants constitute false designation, passing off and false advertising in connection with products and services distributed in interstate commerce, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

64. Defendants' acts, as set forth above, have caused plaintiff and the Class injury;

WHEREFORE, Plaintiff together with Class members, seeks actual and/or compensatory damages; restitution; requests their purchases of said Tassimo systems be voided; and further seek equitable relief, including, without limitation, refunds of the payments tendered for the Tassimo systems purchased during the subject period; together with any other remedies available under the Lanham Act, including, but not limited to, treble damages; disgorgement of profits; and costs and attorney's fees, and any additional and further relief deemed available and appropriate under the circumstances.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff together with Class members, requests judgment in their favor and against defendants on each and every Count set forth herein in an amount exceeding \$5,000,000.00 to satisfy their actual and/or compensatory damages and restitution; and further seek equitable relief, including, without limitation, ordering defendants to tender refunds of the payments made for said products; together with any other remedies available under the Lanham Act, including, but not limited to, treble damages; disgorgement of profits; and costs and

attorney's fees, and any additional and further relief deemed available and appropriate under the circumstances.

**JURY DEMAND**

Plaintiff and the Class demand trial by jury in all matters so triable.

Respectfully submitted,

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